

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-137882-13

Date:

March 14, 2014

### LEGEND:

Distributing =

Controlled =

Partnership =

Subsidiary =

State A =

Individual A =

Individual B =

Individual C =

Business A =

Tasks =

Date 1 =

Year 1 =

a =

b =

Property =

Note =

Dear :

This letter responds to your August 23, 2013 request for rulings on certain federal income tax consequences of the Proposed Transaction (as described below). The information provided in that request and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by penalties of perjury statement executed by the appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution: (i) satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see §355(a)(1)(B) of the Internal Revenue Code and §1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in the distributing corporation or the controlled corporation (see §355(e) and §1.355-7).

#### SUMMARY OF FACTS:

Distributing was incorporated on Date 1 in State A and has elected to be an S corporation. Distributing owns approximately a acres of land. Distributing engages principally in Business A. Subsidiary, which is wholly owned by Distributing, is engaged in aspects of Business A.

Prior to Year 1, Partnership owned all of the outstanding shares of Distributing. In Year 1, Partnership distributed in a non-liquidating distribution all of the Distributing shares to Individual A, Individual B and Individual C, equally. Individual A, Individual B and Individual C, who are related, continue to own Distributing equally. Individual A, Individual B and Individual C are current officers and directors of Distributing. Distributing has no employees. Individual A, Individual B and Individual C perform all managerial activities for Business A. Distributing utilizes the employees of the Partnership to perform Tasks (certain operational activities) for Business A. These employees perform these Tasks under the direction and order of Distributing. Distributing reimburses Partnership for the cost of such services.

Individual A, Individual B and Individual C, own equally all the interests in Partnership. Partnership has approximately 6 employees. Individual A, Individual B and Individual C have been involved in Business A all of their lives.

#### PROPOSED TRANSACTION:

Distributing intends to engage in the following transactions (the "Proposed Transaction"):

- (i) Distributing will form Controlled as a State A corporation that may elect to be treated as a Subchapter S corporation for federal income tax purposes. Distributing will own all of the stock of Controlled.
- (ii) Distributing will contribute to Controlled a combination of Property, cash, and a Note which will, in the aggregate, be equal to one-third of the value of Distributing (the "Contribution").
- (iii) Distributing will distribute all of the stock of Controlled to Individual C in complete redemption of Individual C's stock in Distributing (the "Distribution").

#### REPRESENTATIONS

Distributing has made the following representations regarding the Proposed Transaction:

- 1. Each of the parties will pay its own expenses, if any, incurred in connection with the Proposed Transaction.
- 2. The fair market value of Controlled common stock to be received by Individual C will be approximately equal to the fair market value of Distributing common stock surrendered by Individual C in the exchange.

3. No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

4. The five years of financial information submitted for Business A conducted by Distributing is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

5. Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

6. Following the Proposed Transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of Business A conducted by Distributing prior to the consummation of the transaction, except that Distributing and Controlled may continue to utilize the Partnership employees, hire their own employees, or the officers of Distributing and Controlled may directly conduct such activities.

7. The distribution of Controlled common stock is being carried out for the corporate business purpose of fit and focus, in particular to resolve shareholder disputes. The distribution of Controlled common stock is motivated, in whole or substantial part, by this corporate business purpose.

8. The total adjusted bases and the fair market value of the assets transferred from Distributing to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under §357(d)) by Controlled, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished, and (iii) the amount of cash and the fair market value of any other property (within the meaning of §361(b)) received by Distributing from Controlled.

9. Any liabilities assumed (as determined under § 357(d)) by Controlled in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

10. The aggregate fair market value of the assets Distributing contributes to Controlled in the Contribution will exceed the aggregate adjusted basis of such assets immediately after the Contribution.

11. Apart from the Note arising in connection with the Proposed Transaction, no inter-corporate debt will exist between Controlled (or any entity controlled directly or

indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) at the time of, or after, the distribution.

12. Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution and distribution.

13. No investment tax credit under §46 has been, or will be, claimed for any property that was transferred by Distributing to Controlled.

14. The Proposed Transaction is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

15. Payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

16. No two parties to the transaction are investment companies as defined in §§368(a)(2)(F)(iii) and (iv).

17. For purposes of §355(d), immediately after the Proposed Transaction, no person (determined after applying §355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §§355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the distribution.

18. For purposes of §355(d), immediately after the Proposed Transaction, no person (determined after applying §355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of any Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that either: (i) was acquired by purchase (as defined in §§355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the distribution; or (ii) is attributable to distributions on Distributing stock or securities that was acquired by purchase (as defined in §§355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the distribution.

19. The Proposed Transaction is not part of a plan or series of related transactions (within the meaning of §1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of §355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

20. Immediately after the transaction (within the meaning of §355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of §355(g)(2)).

21. Distributing is an “S” corporation within the meaning of §1361(a) and there is no plan or intent to revoke or otherwise terminate the “S” corporation election of Distributing. Controlled will be eligible to elect to be an “S” corporation pursuant to §1362(a) on the first available date after the Proposed Transaction and will consider making an election under §1362(a) based on the facts and circumstances that arise after the Proposed Transaction.

#### RULINGS:

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. The transfer by Distributing of assets in exchange for Controlled common stock, followed by the distribution of Controlled common stock, will be a reorganization under §368(a)(1)(D). Each of Distributing and Controlled will be “a party to a reorganization” under §368(b).

2. No gain or loss will be recognized by Distributing on its transfer of assets to Controlled in exchange for Controlled common stock. Sections 357(a) and 361(a).

3. No gain or loss will be recognized by Controlled on its receipt of assets from Distributing in exchange for Controlled common stock. §1032(a).

4. The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before its transfer. §362(b).

5. The holding period of each asset received by Controlled will include the period during which that asset was held by Distributing. §1223(2).

6. No gain or loss will be recognized by (and no amount will be included in the income of) Individual C on the receipt of Controlled stock in exchange for his shares of Distributing stock. §355(a)(1).

7. No gain or loss will be recognized by, and no amount will otherwise be included in the income of, Distributing on the distribution of Controlled stock to Individual C. Sections 361(c) and 355(d).

8. The basis of the shares of Controlled common stock in the hands of Individual C will equal his basis in the shares of Distributing common stock held by him immediately before the Proposed Transaction. §358(a)(1).

9. The holding period of the shares of Controlled common stock received by Individual C will include the holding period of the shares of Distributing common stock surrendered by Individual C, provided such Distributing common stock is held as a capital asset by Individual C on the date of the Proposed Transaction. §1223(1).

10. Earnings and profits will be allocated between Distributing and Controlled in accordance with §312(h) and §1.312-10(a).

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and § 1.355-2(d));
- (iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing or Controlled (see section 355(e) and § 1.355-7).

#### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Lisa A. Fuller*

Lisa A. Fuller  
Branch Chief, Branch 5  
Office of Associate Chief Counsel (Corporate)

cc: